THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on :03.04.2007

+ **WP (C) 14148/2006 & CM 11096/2006.**

ANOOP KUMAR BARA ...Petitioner

- versus -

UNION OF INDIA & ORS. ...Respondents

Advocates who appeared in this case:
For the Petitioner : Mr P.P. Khurana with Ms Ranjana Pattanayak.
For the Respondents : Mr Pushkar Sood with Ms Archana Gaur for UOI.
For the Respondents 2,3 : Ms Kamini Jaiswal.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to the Reporter or not? Yes

3. Whether the judgment should be reported in Digest? Yes

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition has been filed by the petitioner being aggrieved by the communication dated 31.7.2006 issued by the Principal of the Institute of Hotel Management Catering Technology & Applied Nutrition, Maharajpura, Airport Road, Gwalior. By virtue of this communication, the petitioner has been notified that as per the order of National Council, New Delhi, the petitioner was declared failed because he was found copying in the annual examination of the year 2006 as a regular/re-appearing student.

2. The learned counsel for the petitioner submitted that first of all, the petitioner has been debarred for two years whereas he ought to have been debarred only for one year even if all the allegations are taken to be correct. Secondly, it was stated by Mr Khurana, the learned counsel appearing for the petitioner, that in any event, the order passed by the National Council ought to be set aside because the principle of natural justice had not been followed and the petitioner had not been given an opportunity of personal hearing. In this connection, he submitted that the notice dated 11.5.2006 that was sent to the petitioner, was sent at an address where the petitioner did not reside. It was sent to 150G, Sector IV, Pushp Vihar, New Delhi. The said notice was not served on the petitioner and the endorsement on the returned envelop reads as under:-

" No such person in 150G."

Based on this endorsement on the envelop, Mr Khurana submits that the petitioner was not aware of the hearing which was to be conducted on 24.5.2006 as indicated in the notice dated 11.5.2006. Obviously, the petitioner did not appear and, therefore, the order of National Council is liable to be set aside because of non-grant of opportunity of hearing.

3. The learned counsel appearing on behalf of the respondents 2 and 3 submitted that the order passed by the National Council does not call for any

interference both on the ground of the period of debarment as well as on the question of natural justice.

4. Having heard the learned counsel for the parties, I find that insofar as the question of period of debarment is concerned, the petitioner can have no grievance. Rule 9.2 of the National Council for Hotel Management and Catering Technology Examination Rules, 2001 (as amended up to May 2004) reads as under:-

> "9.2 A candidate found exchanging answer book or question paper with solution or copying or having in his/her possession or accessible to him/her papers, books or notes or material relating to the subject of the question paper shall be disqualified for a minimum period of one academic session following the examination in question and is liable to be disqualified for a maximum period of three years following the examination in which he/she (deliberately) adopted unfair means. The candidate found to have thus indulged in unfair means shall be deemed to have failed in all subjects. After expiry of the period of disqualification such candidate shall have to reappear in the entire examination."

A reading of the said Rule clearly indicates that where a candidate is found *inter alia* to be copying, the said candidate has to be disqualified for a minimum period of one academic session following the examination in question and is liable to be disqualified for a maximum period of three years following the examination in which the candidate adopted unfair means. The petitioner was found copying in the examination held on 24.4.2006. Accordingly, as per Rule

9.2 the minimum period of disqualification was one year following the examination in question. It means that the petitioner, if awarded the minimum period of disqualification could at the earliest take the examination in the year 2008. This is so because the examination of 2006 is not to be counted and the disqualification would be for the next year. Therefore, the contention raised by Mr Khurana is not tenable.

5. As regards the alleged violation of principle of natural justice, I find that the notice dated 11.5.2006 was sent to the petitioner at the address given by him in the application form itself. A copy of the application form is Annexure R-3 to the counter affidavit filed on behalf of the respondents. In the rejoinder affidavit filed on behalf of the petitioner the factum of filing the said application (annexure R-3) is not denied. The allegation that it was sent to the address as mentioned in the application form is also not specifically denied. The only statement made in the rejoinder affidavit is as under:-

> ".....Further, the letter was allegedly sent on the address of the Petitioner at 150G, Sector-IV, Pushp Vihar, New Delhi, whereas the Petitioner's address on the record of the Respondent is 147-C, Sector-IV, Pushp Vihar, New Delhi appearing on the Scheduled Caste Certificate Annexure-A to the writ petition."

This statement cannot but be regarded as evasive and does not directly answer the statement contained in the counter affidavit which is as under:-

> ".....The Petitioner was thereafter asked to depose before the Examination Committee vide its letter dated 11.05.2006 for a

> personal hearing on 24.05.2006 at 10.00 am. It is pertinent to mention that the letter/notice of personal hearing was sent on the address mentioned by the Petitioner in his own handwriting in the admission form. A true copy of the admission form is annexed herewith and marked as **ANNEXURE R-3**"

6. The petitioner has attempted to give the impression that he did not reside at 150G, Sector IV, Pushp Vihar, New Delhi, which impression is not borne out by the record. The application for admission for the term 2006 examination, filled in the handwriting of the petitioner, itself indicates the permanent address for correspondence as 150-G, Sector IV, Pushp Vihar, New Delhi. This clearly indicates that the address to which the notice dated 11.5.2006 was sent, was the address indicated by the petitioner himself and, therefore, he cannot now take the ground that the notice was sent to the wrong address and that consequently, he was denied an opportunity of hearing. Accordingly, I find no infirmity with the order passed by the National Council.

7. Mr Khurana however, submits that even if it was to be held that the notice was sent at the address given by the petitioner himself, the fact that the petitioner did not receive the notice, is still not disputed. That being the case, the petitioner may be given an opportunity to answer the case against him. Ms Jaiswal, who appears on behalf of the respondents 2 and 3, submits that the Committee would be meeting after the examination sometime in May, 2007 and if the correct address is provided by the petitioner, then a notice would be sent

to him to appear before the Committee sometime in May. Mr Khurana undertakes to provide the correct address within a week.

8. This writ petition is disposed of with the direction that the impugned order shall continue to stand subject to any other order that may be passed by the Committee after hearing the petitioner. No costs.

BADAR DURREZ AHMED
(JUDGE)

April 3, 2007
J